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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45264
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-8152
)	
JACOB TYLER ANDERSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Anderson failed to establish that the district court abused its discretion by imposing concurrent unified sentences of five years, with two years fixed, upon his guilty pleas to two counts of sexual exploitation of a child?

Anderson Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Anderson downloaded, viewed, and masturbated to videos and photographs of child pornography on an ongoing basis over a period of approximately six years, beginning when he

was “age of 30 or 31.” (PSI, pp.117-18.¹) On December 8, 2016, officers executed a search warrant at Anderson’s residence, during which they located a laptop computer, a netbook computer, and an external hard drive containing a total of 3,670 files of “Child Abuse Material” and 25,418 files of “Child Exploitative Material.” (PSI, pp.12, 29.)

The state charged Anderson with seven counts of sexual exploitation of a child by possession of sexually exploitative material. (R., pp.27-29.) Pursuant to a plea agreement, Anderson pled guilty to two counts of sexual exploitation of a child and the state dismissed the remaining counts and agreed to recommend a unified sentence of 20 years, with three years fixed. (R., pp.32-33.) The district court imposed concurrent unified sentences of five years, with two years fixed. (R., pp.51-54.) Anderson filed a notice of appeal timely from the judgment of conviction. (R., pp.55-57.)

Anderson asserts his sentences are excessive in light of his status as a first-time felon, alcohol use, support from his mother, purported remorse, and willingness to participate in treatment. (Appellant’s brief, pp.3-5.) The record supports the sentences imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion.

¹ PSI page numbers correspond with the page numbers of the electronic file “Anderson 45264 psi.pdf.”

McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for one count of sexual exploitation of a child by possession of sexually exploitative material is 10 years. I.C. § 18-1507(3). The district court imposed concurrent unified sentences of five years, with two years fixed, for the two counts, which fall well within the statutory guidelines. (R., pp.51-54.) Furthermore, Anderson’s sentences are appropriate in light of the ongoing nature of his criminal behavior, the egregiousness of the offenses, and the harm done to the victims. Although Anderson points to his “lack of criminal history” as a mitigating factor (Appellant’s brief, pp.4-5), it cannot be ignored that he downloaded, viewed and masturbated to videos and photographs of child pornography on an ongoing basis for approximately *six years*, and that he had amassed over 29,000 files containing images of children being sexually abused and/or exploited (which he

stored on three separate electronic devices) (PSI, pp.12, 29, 117-18), thereby victimizing a multitude of children over an extended period of time. The child pornography that Anderson collected included videos of children as young as four being sexually abused and/or raped. (PSI, p.11.) The sexually exploitative material described in the two counts of sexual exploitation of a child to which Anderson pled guilty is truly heinous; one count refers to a video of an adult male forcing an eight- to 10-year-old girl to perform oral sex on him and raping her, and the second count refers to a video in which an “adult male in a clown mask” “shoves” a little girl – who is between the ages of five and eight – “around the bed,” “starts jamming his fingers into her vagina” – causing her to cry, forces her to perform oral sex on him, inserts a vibrator into her vagina, calls her multiple derogatory names, talks about raping her, and holds her down and rapes her “as she cries and attempts to pull away.” (R., p.28; PSI, pp.52-53.)

At sentencing, the state addressed the heinous nature of the offenses, the ongoing harm to the victims, and the fact that Anderson committed the offenses on an ongoing basis over a period of “five to six years.” (Tr., p.26, L.23 – p.31, L.3 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Anderson’s sentences. (Tr., p.36, L.1 – p.47, L.14 (Appendix B).) The state submits that Anderson has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Anderson's convictions and sentences.

DATED this 16th day of January, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of January, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 forthcoming as I can be. I -- I understand the gravity
 2 of this situation. I -- I'm ready for whatever comes
 3 next. I -- I feel like I'm -- I mean, seeing the
 4 paperwork can't really give me a better definition of
 5 what's going on. I -- I feel that he's given me the best
 6 information possible, so I do feel com -- comfortable
 7 continuing.

8 THE COURT: All right, fair enough.
 9 Mr. Dinger, corrections, additions, or
 10 objections to the presentence materials?
 11 MR. DINGER: None, Your Honor.
 12 THE COURT: Did either party wish to present
 13 evidence today?
 14 MR. DINGER: No, Your Honor.
 15 MR. LORELLO: No, Judge.
 16 THE COURT: Any reason, legal or otherwise,
 17 the Court can't pronounce judgment?
 18 MR. LORELLO: No, Your Honor.
 19 MR. DINGER: No, Your Honor.
 20 THE COURT: Mr. Dinger, I'll hear the State's
 21 recommendations.
 22 MR. DINGER: Thank you.
 23 Your Honor, our recommend is a 3 plus 17, for
 24 20, and that you impose that sentence. I guess that
 25 would break down to a 3 plus 7 and a 0 plus 10.

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1 some of the videos that he had were -- were in that
 2 category of just the -- the horribly -- just terrible.
 3 Many files I don't think reading -- reading the
 4 description of I'll ever forget, specifically Count II.
 5 And I -- I don't really want to describe it
 6 here, but it's a Bates stamp 45. It's -- it's one of
 7 those, the horrific rape of a -- of a young child by a
 8 man dressed as a clown.

9 To his credit, at the time he admitted
 10 involvement to the police. At the beginning, he -- well,
 11 actually, he was forthcoming in the PSI, admitting that
 12 he would download and masturbate to the videos, that he's
 13 been doing this for some five to six years, and admits an
 14 attraction to 9 to 13-year-old children.

15 He -- troubling to me is that he seems to
 16 blame some of this on alcohol in part. But then, what's
 17 really troubling to me is he doesn't seem to have much
 18 insight into the harm that he's caused these roughly
 19 thousands of children or the community at large. And I
 20 draw on that because he told the PSI investigator that he
 21 didn't think the plea was fair because, quote, I have no
 22 victim. I had no plans to hurt anyone. I was just
 23 looking at something I found appealing, close quote.

24 First, Your Honor, there's something
 25 significantly wrong there if this is what he finds

27

1 Your Honor, this is a typical child
 2 pornography case in some regards, and then in other
 3 regards it's not. So, what makes it typical is that the
 4 defendant was downloading child pornography using a peer
 5 to peer network that was discovered by law enforcement.
 6 They were able to determine the IP address, and figure
 7 out that it was the defendant who was doing it.

8 What I think is -- is not typical in this
 9 case, Your Honor, is that he had a large amount of files.
 10 Based on the forensic report, he had 3,670 files of
 11 cheer -- of clear child pornography, going by the Federal
 12 standard. But he also had 25,000 files of children that
 13 don't fit into the other category because either you
 14 can't totally determine the age of the child, the child's
 15 not engaged in a sex act, or child's genitals are not
 16 shown.

17 But still, they were considered -- oddly
 18 enough, in the Federal system they're considered child
 19 exploitative material, whereas the other 3,600 were
 20 the -- were child abuse material.

21 Nonetheless, Your Honor, he has 30,000 files
 22 of -- of just terrible images. And, Your Honor, it --
 23 it's kind of odd to talk about it this way, but as far as
 24 child pornography goes, there's also a spectrum in that
 25 of -- of what's horrible and what is truly horrible. And

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1 appealing. I mean, Count I is the rape of an 8-year-old
 2 child who's forced to perform oral sex on an adult man,
 3 then raped vaginally, and then he ejaculates on her face.
 4 Count II, again, Your Honor, is -- is even worse.

5 So, there's just a real disconnect, some real
 6 thinking problems there, for him to call this just
 7 something that he was looking at that's appealing. But
 8 the bigger problem is the attitude in that there are no
 9 victims and that he wasn't doing harm.

10 These children, Your Honor, are --
 11 specifically the ones in these images -- are victimized
 12 every time he downloads these, every time he views them,
 13 every time he masturbates to them. And then, worse, by
 14 downloading this filth, it signals others to create more.
 15 To film the rape and molestation of children because
 16 there are people that want to download it, people that
 17 want to look at it. It's a supply and demand industry,
 18 and he's feeding that industry by downloading. And he
 19 downloads a lot.

20 Also, Your Honor, these were real children.
 21 So, specifically, just these children have been harmed by
 22 it, but it also has a large effect on the community.

23 I know that Your Honor has read countless
 24 PSIs where individuals are significantly disadvantage in
 25 life when they are molested, and oftentimes those people

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1 end up in the court system, turning to drugs, turning to
 2 other things that put them in front of you. And it's --
 3 you know, the defendant is, by feeding this industry,
 4 helping create more victims.

5 Your Honor, so his claim that there are no
 6 victims is both untrue and incredibly offensive.

7 He was found to be a low risk to re-offend,
 8 though the testing, I think, indicates some problems.

9 The PAI, talking about motivation for treatment, the
 10 author of the PA -- PAI indicates the examinee was
 11 somewhat below average in comparison to adults not being
 12 seen in therapeutic settings, and substantially lower
 13 than individuals actively engaged in treatment.

14 The MSI 2 shows that he does not recognize or
 15 is unable to acknowledge the behaviors that preceded his
 16 behavior in inappropriate sexual ways.

17 And so, Your Honor, those are troubling to
 18 the State. His diagnosis is troubling to the State. He
 19 was -- he does have a DSM-5 diagnosis of paraphilic
 20 disorder with child pornography. Other parasitic --
 21 paraphilic disorders with sadomasochism and narcissistic
 22 traits.

23 And so, Your Honor, overall he's created
 24 countless victims, though he doesn't think he's created
 25 any, and just the crime that he has done deserves

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1 think it's disingenuous to say that Jacob doesn't feel
 2 bad about what he did, or doesn't appreciate the
 3 significance of what he did.

4 He takes responsibility from -- from the
 5 get-go and he cooperates fully. And the State's sort of
 6 parsing words out and sort of, you know, looking at the
 7 glass as half empty, which I sort of understand. It's
 8 their position to do and their prerogative. But there's
 9 lots of other thing that make the glass half-full for
 10 Jacob.

11 The psycho-sexual eval called Jacob a low
 12 risk to re-offend. And the Court has reviewed many of
 13 these, and that's fairly rare. It also says that he's
 14 moderately amenable to treatment. Those were the
 15 conclusions of the evaluator.

16 Jacob's PS -- or his LSI is low. He's got
 17 some addiction issues that he needs to -- to take care
 18 of, but the State nowhere mentions once Jacob's physical
 19 condition. And he -- I -- I can't imagine someone with
 20 the correct set of controls who could pose less risk to
 21 society going forward.

22 The fact of the matter remains if Jacob never
 23 has access to another computer, he never commits this
 24 crime again, period. And Jacob can't do much about it.
 25 And while the State's argument rings of specific and

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1 significant prison time.

2 So, we would ask to you follow our
 3 recommendation.

4 THE COURT: Mr. Dinger, thank you.

5 Mr. Lorello?

6 MR. LORELLO: Thank you, Judge.

7 While I can certainly appreciate the State's
 8 comments, I'm a little concerned by -- I -- when Jacob
 9 says that he's not victimizing others, I don't think
 10 that's a fair reflection of how Jacob feels about what he
 11 did. It's untrue, to be sure, and I would agree with the
 12 State, but Jacob's not terribly sophisticated, and the
 13 State's recitation of all the potential harm from
 14 downloading this stuff, while true, is more of a social
 15 science kind of definition.

16 And what -- Jacob feels terrible about what
 17 he did, and I don't think it's -- he's shunting
 18 responsibility, or shifting it, or somehow suggesting
 19 that it was anyway harmless to the children involved.
 20 I -- I just don't think Jacob understands the world in
 21 which the folks who do this stuff every day understand
 22 the real harm that comes from all of this.

23 And so, while I agree that from the State's
 24 perspective, that Jacob's comments show sort of a lack of
 25 appreciation for the harm that he was doing, I don't

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1 general deterrence and just punishment, I think that
 2 there's other factors to consider. And I think that
 3 there are many other things that can be done short of
 4 simply sending Jacob to prison for at least 3 years and
 5 up to 20, a place where Jacob's not likely to do very
 6 well because of his physical condition. And it's not
 7 something that he did to himself, he was -- it's -- it's
 8 his cross to bear, among many other things.

9 The presentence investigator recommends
 10 retained jurisdiction. I think the Court can even go
 11 short of that and place Mr. Anderson on probation. And I
 12 don't make that suggestion because I -- I want to
 13 depreciate the seriousness of what Jacob did. I think
 14 it's a very serious issue, but Jacob is very unique.
 15 He's probably one of the most unique defendants that the
 16 Court will see over the course of time.

17 What he did was terrible and it cannot be
 18 excused. And so, I -- I understand the Court needs to
 19 take that into consideration. But I also think the Court
 20 can accomplish it -- its objectives under Toohill with a
 21 probation recommendation. All the things that the
 22 presentence investigator and the psycho-sexual evaluation
 23 expect Jacob to do, he can do out of custody.

24 And I don't mean to put too fine a point on
 25 it, but Jacob's sort of in his own prison already. He --

APPENDIX B

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1 his handicap is severe. And I think that with the
2 appropriate controls and the appropriate supervision,
3 Jacob's not a risk to anyone in the future. The biggest
4 one is his access to a computer. He certainly can't
5 create new victims on his own, physically.

6 And so, what he needs to do is he needs to
7 understand that this is a compulsion, it's not a healthy
8 one, and he learn -- needs to learn how to deal with it.
9 Doing that in a prison setting -- as I said, Judge, he's
10 already in prison. What's the difference for Jacob's
11 life if he's in his wheelchair at an IDOC facility versus
12 a wheelchair at his house?

13 I think the Court can do a number of things
14 to protect society. The only thing that it can't do by
15 not -- by putting him on probation is send a serious
16 message that crimes like this deserve prison, and I'm
17 asking the Court to sort of overlook that aspect or to
18 give it less weight in combination with Jacob's other
19 issues.

20 We'll leave the underlying sentence in the
21 Court's discretion. I think Jacob even understands that
22 a long period of supervision is appropriate in this case,
23 so that he can be monitored to make sure that he's not
24 doing this again. But Jacob's fully willing to do
25 whatever the Court would require. He would very much

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1 like to show the Court and the community that he's not a
2 threat any more, that this is an -- an issue that he
3 wants to put behind him. He's willing to do whatever it
4 takes, Judge.

5 So, thank you.

6 THE COURT: Mr. Lorello, thank you.

7 Mr. Anderson before I sentence you, sir, you
8 have the right to speak with the Court. You're not
9 required to. Is there anything that you would like to
10 say?

11 THE DEFENDANT: I -- I sincerely don't know.
12 I -- I understand what I've done is absolutely terrible.
13 I can't forgive myself for what I've done.

14 Over the last six years, five to six years,
15 every single time that I've thought about it
16 independently, it's kind of made me sick. Society -- and
17 I -- can't stand, abhor these kinds of actions, but I got
18 into a bad habit and I reinforced it.

19 I do want as much help as I can possibly get.
20 I don't want to re-offend. I have -- I don't want to
21 have this interest any longer, I don't want to be
22 involved with anything like this ever again.

23 Whatever the Court finds needs to be done to
24 help me in that capacity is all that I ask.

25 THE COURT: Mr. Anderson, thank you.

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1 Mr. Anderson, on your guilty plea to these
2 two charges of Possession of Sexually Exploitative
3 Material, I'll find that you are guilty. I'll enter a
4 judgment convicting you of those offenses.

5 This is a difficult case for the Court for
6 sentencing, Mr. Anderson.

7 In sentencing you, as with sentencing anyone,
8 I'm required to balance a number of other -- a number of
9 factors. Those include punishment, rehabilitation, I'm
10 required to attempt to fashion a sentence that hopefully
11 deters you from engaging in this type of conduct in the
12 future, hopefully deters others from engaging in this
13 type of conduct in the future.

14 My primary obligation is to protect the
15 community.

16 This is difficult for the Court for this
17 reason, Mr. Anderson, I share the -- most of the views
18 expressed by Mr. Dinger about the impact that these kinds
19 of actions have on society. This is a burgeoning
20 industry that causes children to be abused on a recurring
21 basis. I want to communicate to you, and to others, that
22 the people who share these kind of files encourage that
23 kind of abuse.

24 It's not much of a distinction, Mr. Anderson,
25 between you being willing to download these things and

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1 look at them for your own sexual gratification and you
2 being the one holding the video camera at time someone
3 else does this.

4 The -- I agree with Mr. Dinger that in
5 addition to whenever these videos were made -- I don't
6 know how old these children are now, when these things
7 were made -- but every time -- I agree that every time
8 you download these materials, that person, whether
9 they're your age, or younger or older, gets victimized
10 again.

11 The Federal authorities communicate to that
12 person that these images have yet -- have been downloaded
13 when the Federal authorities know who these people are.
14 And they have to relive these events on an ongoing basis
15 every time that happens.

16 I view these crimes as significantly serious.
17 I agree with your attorney as to your statements about
18 not having a victim. I understood you to be simply
19 telling the presentence investigator that you weren't out
20 directly molesting children. I didn't view that as -- I
21 don't view that as you shunning responsibility for what
22 it is that you did in this case. If anything, it just
23 shows perhaps some ignorance on your part about the
24 effect that your actions have on the children who are
25 involved.

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1 I say that because that's part of what makes
 2 this sentencing difficult, Mr. Anderson. Other --
 3 when -- since you have been contacted by the police, you
 4 have, in my view, been appropriate and responsive. You
 5 have, with the caveat I just mentioned, appeared to take
 6 some responsibility for your actions and you express a
 7 desire not to do this again.

8 The difficult thing is how I go about
 9 fashioning a sentence that balances those objectives.
 10 I've read with some care the letter of your mother; I
 11 understand her views about how you got yourself into this
 12 place. You're kind of unemployed, you're depressed, you
 13 start drinking and sitting in your house with little
 14 other things to do than engage in this type of behavior.
 15 I think alcohol was a contributing factor in these
 16 offenses, although I don't think it's what led you to
 17 view this material.

18 You have -- as you have stated to the --
 19 Dr. Johnston, you started looking at this stuff and you
 20 had a reaction to it, you were aroused by this kind of
 21 thing. And so, you kept looking at it because it aroused
 22 you. That is a concern for the Court going forward
 23 because I don't want you to engage in this behavior
 24 again. I'm glad that you recognize that issue and that
 25 you express a desire to stop it.

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1 through the use of coercion.

2 In this case, Mr. Anderson, I think the risk
 3 you pose is simply to continue doing what you did in this
 4 case, which is to view pornographic materials involving
 5 children on the Internet. Your attorney has suggested
 6 that it would be more difficult for you to acquire a
 7 computer than others; I'll take that argument for what
 8 it's worth, but I think that that's kind of how I view
 9 your disability in this case.

10 I certainly hope that you do not see yourself
 11 as living on a daily basis in a prison just simply
 12 because of your disability. If you do, that mindset, I
 13 think, puts you at a higher risk to engage in this
 14 behavior again simply because it would lead to depression
 15 and alcohol use.

16 In deciding whether or not to impose a period
 17 of incarceration, I'm guided by those factors set forth
 18 in Idaho Code 19-2521. That statute says that I should
 19 avoid a sentence of incarceration unless I feel
 20 incarceration is appropriate for the protection of the
 21 public because of a number of factors. Those include
 22 one, where there is a -- there is an undue risk that
 23 during the period of a suspended sentence or probation
 24 you will commit another crime.

25 I agree with Dr. Johnston that you are a low

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1 The concern is how do I make that happen, and
 2 how much risk do I accept fashioning a sentence.

3 Dr. Johnston's indication is he believes you
 4 are a low risk to engage in this type of activity again.

5 I'll make some comments about your attorney's
 6 comments about your physical disability.

7 Obviously, you were born with some physical
 8 disabilities that most of us don't have. In my view,
 9 you've adapted well, and you certainly -- you have
 10 limitations that many of us don't, but that doesn't, in
 11 my view, prevent you from having a satisfying, and
 12 productive, and law abiding life. I don't think that any
 13 part of your disability played any role in this -- you
 14 making these choices to commit this crime.

15 I don't think your disability is a reason
 16 that I -- something that I could -- should consider in
 17 deciding the appropriate punishment. I'm simply going to
 18 treat you as the same as anyone else in deciding what the
 19 appropriate punishment should be.

20 I do understand your attorney's comments that
 21 because of your limitations it would be more difficult
 22 for you to engage -- actually engage is child abuse with
 23 a child, simply because of your physical limitations, at
 24 least if we're talking about force. Most child abuse
 25 doesn't happen through the use of force; it happens

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1 risk to look at child pornography in the future.

2 The question then is whether even that low
 3 risk is an undue one, given the significant impacts that
 4 continuing to do has on the people whose image -- who
 5 appear in those images and on children who may be abused
 6 to create more. I think that it is.

7 That you are in need of correctional
 8 treatment that can be most -- provided most effectively
 9 by your commitment to an institution. Certainly, you
 10 need some alcohol treatment, you need some treatment for
 11 your attraction to these kinds of images, but that can be
 12 provided in the community, so I can't make that finding.

13 A lesser sentence will depreciate the
 14 seriousness of your crime. I do -- I do find that to be
 15 the case here for the reasons I've stated Mr. Anderson.
 16 This is a significant offense that, in my view, warrants
 17 some significant punishment.

18 Imprisonment will provide an appropriate
 19 punishment and deterrent to you and to others.
 20 Certainly, it will provide a punishment and deterrent to
 21 you; I'm hopeful that it would provide deterrence to
 22 others.

23 Whether you are a multiple offender or a
 24 professional criminal. Certainly that is not the case
 25 here.

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1 There are other factors that I should
2 consider, although those are less controlling of the
3 Court's decision. That your conduct neither caused or
4 threaten harm. Certainly, as I have attempted to explain
5 today, even the act of looking at these kinds of images
6 causes those people harm and could cause other children
7 harm in the future.

8 That you did not contemplate your criminal
9 conduct would cause or threaten harm; I'll find that is
10 true as well. I think you were simply ignorant of how
11 this may impact the community.

12 That there were substantial grounds tending
13 to excuse or justify the defendant's criminal conduct,
14 though failing to establish a defense. That is not true
15 here.

16 The victim of your crime induced or
17 facilitated the commission; that's not applicable.

18 You have compensated or will compensate the
19 victim; that is not applicable.

20 That you have no history of prior delinquency
21 or criminal activity, that you have led a law-abiding
22 life for a substantial period of time before the
23 commission of your present crime. I'll find that to be
24 true.

25 That your criminal conduct was the result of

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1 circumstances unlike to reoccur. That's kind of the
2 quest -- penultimate question in any criminal case.

3 I don't -- as the statute in this case
4 contemplates, I'm not willing to make that finding.
5 Although you are a low risk, this was a behavior you
6 engaged in on multiple occasions.

7 The character and attitudes of the defendant
8 indicate that the commission of another crime is
9 unlikely. I'll find that is true as well. There's --
10 your character and your attitude are appropriate in this
11 offense.

12 So, that's kind of a mixed bag, Mr. Anderson.
13 There are some factors that weigh in your favor; there
14 are some factors that weigh towards my simply imposing a
15 period of incarceration. And, that's why this case is a
16 difficult one for the Court.

17 I have certainly considered fashioning a
18 sentence that permits you to undergo some treatment to
19 understand why you're attracted to these types of images
20 and how you can resist acting on that compulsion in the
21 future. Part of that would be your alcohol abuse.
22 Certainly, I'm aware that that can be done in the
23 community.

24 In the end, Mr. Anderson, I think that
25 permitting you to be placed on probation would simply

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1 send an inappropriate message of deterrence to you and to
2 others. I realize Mr. Lorello has asked me to kind of
3 reduce that consideration in your case. Your case is
4 very similar to others I see, although your risk is
5 probably lower than average. I'm not willing to overlook
6 that. It's my responsibility to make sure that you and
7 others understand that this type of behavior can't be
8 tolerated, Mr. Anderson.

9 Then the question is, how do I fashion some
10 period of incarceration. The State wants me to simply
11 lock you up for 20 years. I think that would be out of
12 proportion with the circumstances.

13 Mr. Dinger has ask -- has argued essentially
14 that I should aggravate this sentence simply due to the
15 number of images you've seen. I understand that
16 argument. Left kind of unstated is it's almost
17 impossible to tell in any of these types of cases how
18 many images someone has viewed. It's rare for someone
19 views one image or a handful of images and then does
20 nothing with them.

21 I don't know that I should punish you because
22 you decided to save the images you viewed, and so they
23 were accessible to the police at a later date, rather
24 than the person who is -- views just as many of these
25 things and is a little better about deleting

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1 this criminal -- the files from his computer.

2 Here's what I'm going to do, Mr. Anderson.
3 On your guilty plea in Count I, I'm going to sentence you
4 to serve 5 years in the State penitentiary. That will
5 consist of 2 years fixed, followed by 3 years
6 indeterminate. On Count II, I will sentence you to an
7 identical term. I will give you credit for the 118 days
8 you have served in custody so far.

9 I will not impose a fine. I will order you
10 to pay those costs, fees, and assessments mandated by
11 statute. I'll order those sentences into execution
12 immediately. Those will run concurrently with each
13 other.

14 Mr. Anderson, that -- in my view, you're
15 going to be incarcerated for a period of 2 years, not
16 including the 200 days [verbatim] that you have already
17 served. I think that this is a -- as lenient as I'm
18 willing to be for the type of conduct you engaged in in
19 this case.

20 I have reduced the total sentence in your
21 case significantly from what the State recommended
22 because I think, in your case, you don't need to be more
23 specifically deterred. I think you need to be given some
24 opportunity to engage in sex offender treatment, to
25 engage in substance abuse treatment. This sentence will

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1 permit you to do so.

2 If you are granted parole, you'll be under

3 parole supervision for a very limited period of time

4 because I think as long as you apply yourself, you can do

5 what you need to do so that this is unlikely to reoccur

6 again. For the reasons I stated, I think this is as

7 lenient as I'm willing to be from a punishment and

8 deterrence standpoint, Mr. Anderson.

9 Mr. Lorello, do you have questions about the

10 sentence the Court has imposed?

11 MR. LORELLO: No, Your Honor.

12 THE COURT: Mr. Anderson, you have the right

13 to appeal this judgment of conviction and these sentences

14 to the State Board of Correction. That appeal must be

15 taken within 42 days of today's date. In that appeal,

16 you have the right to the assistance of Counsel. If you

17 are indigent, the costs of your attorney and the costs of

18 the appeal would be paid for by the State.

19 Do you have questions about your appeal

20 rights, sir?

21 THE DEFENDANT: No.

22 THE COURT: Mr. Anderson, I know this isn't

23 the outcome that you wanted. I hope I've explained at

24 least my thought process in decide -- deciding this

25 sentence. I encourage you to maintain the attitude that

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1 you've had here in court today, maintain some view that

2 this isn't the end of your life, Mr. Anderson. You're

3 going to be able to put this behind you, but that's going

4 to take some work on your part.

5 I realize that prison is going to be more

6 difficult to you than many others because of your

7 disability. Frankly, it's probably going to be more

8 difficult for you because of the nature of these charges

9 than anything else.

10 I encourage you to maintain the attitude

11 you've had today, focus on what you need to do so that

12 you can be eligible for parole at the earliest

13 opportunity.

14 Good luck to you, sir.

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: You're welcome.

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18 (The proceedings concluded at 2:07 p.m.)

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